

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 FRANK HEARING,

Case No. 3:20-cv-00049-MMD-CLB

4 Plaintiff,

ORDER

5 v.

6 RICHARD SNYDER et al.,

7 Defendants.

8 This action began with a pro se civil rights complaint filed pursuant to 42 U.S.C. §
9 1983 by a state prisoner. Plaintiff has submitted an application to proceed *in forma*
10 *pauperis*. (ECF No. 1). Based on the financial information provided, the Court finds that
11 Plaintiff is unable to prepay the full filing fee in this matter.

12 The Court entered a screening order on September 7, 2021. (ECF No. 7). The
13 screening order imposed a 90-day stay and the Court entered a subsequent order in
14 which the parties were assigned to mediation by a court-appointed mediator. (ECF Nos.
15 7, 9). The Office of the Attorney General has filed a status report indicating that settlement
16 has not been reached and informing the Court of its intent to proceed with this action.
17 (ECF No. 11).

18 Like many prisoners who file civil-rights claims, Plaintiff asks the Court to find and
19 appoint a free lawyer. (ECF No. 12). A litigant does not have a constitutional right to
20 appointed counsel in 42 U.S.C. § 1983 civil-rights claims. *Storseth v. Spellman*, 654 F.2d
21 1349, 1353 (9th Cir. 1981). The statute that governs this type of litigation, 28 U.S.C. §
22 1915(e)(1), provides that “[t]he court may request an attorney to represent any person
23 unable to afford counsel.” However, the court will appoint counsel for indigent civil
24 litigants only in “exceptional circumstances.” *Palmer v. Valdez*, 560 F.3d 965, 970 (9th
25 Cir. 2009) (§ 1983 action). “When determining whether ‘exceptional circumstances’ exist,
26 a court must consider ‘the likelihood of success on the merits as well as the ability of the
27 petitioner to articulate his claims pro se in light of the complexity of the legal issues

1 involved." *Id.* "Neither of these considerations is dispositive and instead must be viewed
2 together." *Id.*

3 The Court does not find exceptional circumstances here. Plaintiff has
4 demonstrated the ability to articulate his claims. The Court denies the motion to appoint
5 counsel.

6 For the foregoing reasons, **IT IS ORDERED** that:

7 1. Plaintiff's application to proceed *in forma pauperis* (ECF No. 1) is
8 **GRANTED**. Plaintiff shall not be required to pay an initial installment of the filing fee. In
9 the event that this action is dismissed, the full filing fee must still be paid pursuant to 28
10 U.S.C. § 1915(b)(2).

11 2. The movant herein is permitted to maintain this action to conclusion without
12 the necessity of prepayment of any additional fees or costs or the giving of security
13 therefor.

14 3. Pursuant to 28 U.S.C. § 1915, as amended by the Prison Litigation Reform
15 Act, the Nevada Department of Corrections will forward payments from the account of
16 **Frank Hearring, #1006445** to the Clerk of the United States District Court, District of
17 Nevada, 20% of the preceding month's deposits (in months that the account exceeds
18 \$10.00) until the full \$350 filing fee has been paid for this action. The Clerk of the Court
19 will send a copy of this order to the Finance Division of the Clerk's Office. The Clerk will
20 send a copy of this order to the attention of **Chief of Inmate Services for the Nevada**
21 **Department of Corrections**, P.O. Box 7011, Carson City, NV 89702.

22 4. The Clerk of the Court shall electronically **SERVE** a copy of this order and
23 a copy of Plaintiff's first amended complaint (ECF Nos. 6, 6-1) on the Office of the Attorney
24 General of the State of Nevada by adding the Attorney General of the State of Nevada to
25 the docket sheet. This does not indicate acceptance of service.

26 5. Service must be perfected within ninety (90) days from the date of this order
27 pursuant to Fed. R. Civ. P. 4(m).

1 6. Subject to the findings of the screening order (ECF No. 7), within twenty-
2 one (21) days of the date of entry of this order, the Attorney General's Office shall file a
3 notice advising the Court and Plaintiff of: (a) the names of the defendants for whom it
4 accepts service; (b) the names of the defendants for whom it does not accept service,
5 and (c) the names of the defendants for whom it is filing the last-known-address
6 information under seal. As to any of the named defendants for whom the Attorney
7 General's Office cannot accept service, the Office shall file, under seal, but shall not serve
8 the inmate Plaintiff the last known address(es) of those defendant(s) for whom it has such
9 information. If the last known address of the defendant(s) is a post office box, the Attorney
10 General's Office shall attempt to obtain and provide the last known physical address(es).

11 7. If service cannot be accepted for any of the named defendant(s), Plaintiff
12 shall file a motion identifying the unserved defendant(s), requesting issuance of a
13 summons, and specifying a full name and address for the defendant(s). For the
14 defendant(s) as to which the Attorney General has not provided last-known-address
15 information, Plaintiff shall provide the full name and address for the defendant(s).

16 8. If the Attorney General accepts service of process for any named
17 defendant(s), such defendant(s) shall file and serve an answer or other response to the
18 first amended complaint (ECF Nos. 6, 6-1) within sixty (60) days from the date of this
19 order.

20 9. Plaintiff shall serve upon defendant(s) or, if an appearance has been
21 entered by counsel, upon their attorney(s), a copy of every pleading, motion or other
22 document submitted for consideration by the Court. If Plaintiff electronically files a
23 document with the Court's electronic-filing system, no certificate of service is required.
24 Fed. R. Civ. P. 5(d)(1)(B); Nev. Loc. R. IC 4-1(b); Nev. Loc. R. 5-1. However, if Plaintiff
25 mails the document to the Court, Plaintiff shall include with the original document
26 submitted for filing a certificate stating the date that a true and correct copy of the
27 document was mailed to the defendants or counsel for the defendants. If counsel has
28 entered a notice of appearance, Plaintiff shall direct service to the individual attorney

1 named in the notice of appearance, at the physical or electronic address stated therein.
2 The Court may disregard any document received by a district judge or magistrate judge
3 which has not been filed with the Clerk, and any document received by a district judge,
4 magistrate judge, or the Clerk which fails to include a certificate showing proper service
5 when required.

6 10. This case is no longer stayed.

7 11. The motion for appointment of counsel (ECF No. 12) is denied without
8 prejudice.

9 DATED THIS 7th day of December 2021,

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11 UNITED STATES MAGISTRATE JUDGE
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